

APPEAL NO. 041044
FILED JUNE 28, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 7, 2004. The hearing officer determined that the respondent/cross-appellant (claimant herein) sustained a compensable injury on _____, that the compensable injury extended to and included a low back injury, but that the claimant did not have disability.

The appellant/cross-respondent self-insured (employer 1 herein) appealed the injury and extent of injury issues, contending that the claimant was not in the course and scope of his employment and that the claimant had not sustained an injury as defined in Section 401.011(26). The claimant appealed the disability issue contending that employer 1 refused to let him return to work until he had a full release from his doctor.

DECISION

Affirmed.

The claimant, a part time recreational specialist for employer 1, testified that he sustained a compensable injury on _____, while running with the children that he was supervising and that the injury extended to his low back. The claimant first sought medical attention on October 27, 2003, and was released to light duty. The claimant attempted to return to work with employer 1 on October 31, 2003, but was told that he would not be allowed to return to work until he obtained a full release from his doctor. During the time period at issue the claimant also had full time concurrent employment as a teacher's aide for special needs children with another employer (employer 2). The claimant continued to work the heavier full time duties with employer 2 during the time he was claiming disability with employer 1.

Employer 1 contends that the claimant was not in the course and scope of his employment (See Section 401.011(26)) because he had been assigned to the "game room" and was not supposed to be running in the gym. There was conflicting evidence presented on this point and whether the game room was even open at the time the claimant was injured. The questions of whether the claimant was in the course and scope of his employment, whether he sustained an injury, and the extent of such injury, all presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the

evidence. The hearing officer did so and her determinations on those issues are supported by sufficient evidence.

The claimant asserts that he had disability from October 27, 2003, because he had only been released to work "with restrictions" but that employer 1 would not allow him to return to work until he had a full duty release. Disability is defined in Section 401.011(16) and the hearing officer appeared to be cognizant of the proposition that a light duty release is evidence that disability continues. However, the hearing officer clearly believed that during the time in question the claimant had the ability to obtain and retain employment at the preinjury wage. Further, the claimant had requested to return to work on October 31, 2003, and never asserted his injury prevented him from work but only that employer 1 imposed a condition on his return to work that he obtain a full duty release.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**EF
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Thomas A. Knapp
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

CONCUR IN THE RESULT:

Gary L. Kilgore
Appeals Judge